Remarks

Summary of Rejections

a. Claims 1, 2, and 4 have been rejected under 35 U.S.C. §102 as being unpatentable over Pontenzone et al., USPP 2002/0152278 in view of Hori et al., USPN 7,209,942.

b. Claims 5-15, of which Claims 5 and 8 are independent, have been rejected under 35 U.S.C. §103 as being unpatentable over Pontenzone et al. in view of Hempleman et al., USPN 6,243,725, Asmussen et al., USPP 2002/0042923, and Errico, USPN 2003/0061610.

The fact that Applicant has focussed its comments distinguishing the present claims from the applied references and countering certain rejections must not be construed as acquiescence in other portions of rejections not specifically addressed.

Obviousness Rejections, Claim 1

As now amended, Claim 1 requires generating a search vector by accessing a database containing data selected from the group including income range. The reasons given on page 3 of the Office Action for persisting in the rejections (namely, that Hori suggests content based on sex, age, and marital status) have thus been removed. Claim 1 is patentable.

Obviousness Rejections, Claims 2 and 4

On the top of page 4 of the Office Action, the examiner alleges that simply because Pontenzone is intended for Internet use, Claims 2 and 4 are "inherent".

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The examiner's attention is directed to MPEP §2112, which clarifies that to be inherent, a feature must *necessarily* be in a reference. In the present case, it is as entirely possible for an Internet playlist to be specific to a particular client device as not (as required by Claim 2). Thus, it is not *necessary* that the feature of Claim 2 appear in Pontenzone's system.

Obviousness Rejections, Claims 5, 6, 13, 14

Claim 5, which previously was rewritten in independent form, has now been amended to recite using purchase price information in the metadata to bill the user as supported on, e.g., page 15, lines 6-10 of the present specification. This amendment lays to rest, without conceding the legitimacy of, the examiner's continued insistence that "metadata is not involved in the actual billing process itself", see, e.g., page 2 of the present Office Action.

Additionally, as to the unexplained "billing information" in paragraph 17 of Asmussen, note that Claim 5 as amended does not merely recite "billing information" in a vacuum but rather "purchase price", whereas in Asmussen the "billing information" could encompass a broad range of possible information that does not suggest any particular informational item. Claim 5 is now allowable.

Obviousness Rejections, Claim 8

Addressing the rejection of the sole remaining independent claim (Claim 8) at issue, Applicant believes it is productive to review the important difference that exists between Asmussen et al. and Claim 8 to understand why modifying Asmussen as proposed with Errico is not suggested and indeed is taught away from. With more specificity, Asmussen et al. "starts by" (abstract) crawling a content metadata database to

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construct a "metadata element" database of indexed word items with vector values. As taught in both the abstract of Asmussen et al. and in paragraph 21, when a user inputs a search request, the vector value of the request is compared to vector values in the "metadata element" database to return suggested content. Only *after* content has been searched and prospective results returned does Asmussen et al. resort to content filters (including a user history filter and a user profile filter) to prune the results, with the pruned results being ranked according to similarities to previously accessed content by that user, paragraph 27. In marked contrast, Claim 8 recites almost the opposite dependency.

Recognizing this, the examiner now resorts to Errico and proposes to combine its teaching of recording programs based on three description schemes, namely, program, system, and user description schemes with Asmussen. First, recording is not the same thing as providing programming titles on a playlist, nor does the relied-upon portion of Errico say otherwise. Thus, combining Asmussen with Errico as proposed would not result in Claim 8 but in what the references *actually teach*, namely, the rankings of Asmussen using a somewhat opposite approach to Claim 8 with separate, autonomous recordings of programming using the three description schemes of Errico.

Second and apart from the fact that Errico appears to have nothing to do with presenting rankings to a user, modifying the ranking scheme of Asmussen to use the person's profile as a basis for a search would defeat the subsequent filtering operation of Asmussen discussed above, rendering any such modification improper under MPEP §2143.01 (citing In re Gordon). Asmussen intends for its filtering based on user profile to occur after searching, not before; since Asmussen never suggests otherwise and since the relied-upon portion of Errico has to do with autonomous recording and nothing to do with ranking at all, the hindsight reconstruction of the references that underpins the rejection is unsupported by the evidence of record.

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